TEH HOCK SENG

v.

MINISTER OF HOME AFFAIRS & ANOR.

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMED JC
[CRIMINAL APPLICATION NO. 44-52-90]
29 MAY 1990

ADMINISTRATIVE LAW: *Applicant detained for two years - Whether confirmation by Yang di-Pertuan Agong made within reasonable time - Whether confirmation is a procedural requirement - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 9(1), 10(2), 11(C)(1) - Interpretation Acts 1948 and 1967, s. 54(2).*

The applicant was arrested and detained under s. 3(1) of the Dangerous Drugs (SPM) Act 1985 ("the Act") on 2 April 1988. On 27 May 1988 the Deputy Minister of Home Affairs made a detention order under s. 6(1) of the Act ordering the applicant to be detained for two years from 31 May 1988. In due course the advisory board received the applicant's representations and made its recommendations to the Yang di-Pertuan Agong for the latter's confirmation as required under s. 10(2) of the Act. However there is no indication in the affidavits filed on behalf of the respondents as to when such confirmation was given.

The issue before the Court is whether the confirmation was given within a reasonable time.

Held:

[1] Section 10(2) or for that matter the Act does not lay down any procedural requirement as to how or when the Yang di Pertuan Agong's direction to the Minister should be made; therefore the question of non-compliance does not arise.

[2] In view of the clear words of s. 11C(1) of the Act (ouster of judicial review), it is not a procedural requirement in the Act that the direction, if given, must be given within a reasonable time.

[Application dismissed.]

Case referred to:

Rajoo s/o Ramasamy v. Inspector General of Police & Ors. [1990] 3 CLJ (Rep) 18

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), 6(1), 9(1), 10(2), 11C(1)
Interpretation Acts 1948 and 1967, s. 54(2)

For the applicant - Karpal Singh, M/S Karpal Singh & Co.
For the respondents - Noorbahari bin Baharuddin (Federal Counsel)

[Editor's note: An appeal against the above decision was lodged to the Supreme Court on 26 May 1990.]

JUDGMENT

Abdul Hamid Mohamed JC:

The applicant was arrested and detained under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) on 2 April 1988. On 27 May 1988 the Deputy Minister of Home Affairs made the detention order pursuant to s. 6(1) of the Act ordering the applicant to be detained for two years from 31 May 1988. On 9 June 1988 the advisory board received the representations made by the applicant under s. 9(1) of the Act. The advisory board heard the representations on 24 August 1988. On 2 September the advisory board made its recommendations to the Yang di-Pertuan Agong. The Yang di-Pertuan Agong "confirmed" the detention order as provided by s. 10(2) of the Act. However, there is no indication in the affidavits filed on behalf of the respondents as to when such confirmation was given. Paragraph 3 of the affidavit of Cik Zainab bt. Saad, the secretary of the advisory board says:

> Pursuant to the recommendations of the advisory board the Yang di-Pertuan Agong has confirmed the detention order made by the Minister under s. 6(1) of the Act against the applicant.

Mr. Karpal Singh, for the applicant raised only one issue. He argued that by virtue of s. 54(2) of the Interpretation Act 1948 and 1967 (Act 388) the confirmation must be given within a reasonable time. He said that there was nothing in the affidavits filed on behalf of the respondents to indicate when the Yang di-Pertuan Agong made the confirmation. Therefore it could not be said that confirmation was made within a reasonable time.

Section 11C(1) of the Act provides:

> 11C(1) There shall be no judicial review in any Court of law, and no Court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

The relevant provision of the Act in this respect is s. 10. As far as I can see there are only two procedural requirements provided by s. 10. They are:

(1) when representations are received, the advisory board in required to consider the representations within three months or such longer period as the Yang di-Pertuan Agong may allow;

(2) the advisory board is required to make recommendations to the Yang di-Pertuan Agong.

These were complied with.

Subsection (2) provides for the Yang di-Pertuan Agong to give directions to the Minister, if any, as he thinks fit. The section or for that matter the Act does not lay down any procedural requirement as to how or when the direction is to or should be made. Therefore the question of non-compliance does not arise. In other words, considering the clear words of s. 11C(1) it is, in my view, not a procedural requirement in the Act that the direction, if given, must be given within a reasonable time. On that ground alone the application fails.

Mr. Karpal Singh drew my attention to the case of *Rajoo s/o Ramasamy v. Inspector General of Police & Ors.* [1990] 3 CLJ (Rep) 18. One of the grounds relied on in that case is similar to the ground relied on in this case. In that case as in this case, it was "not clear" when the direction was made by the Yang di-Pertuan Agong. Edgar Joseph Jr. J, agreed that the "decision of the Yang di-Pertuan Agong under s. 10(2) of the Act agreeing with the recommendations of the advisory board must be made within a reasonable time." Considering the circumstances of the case, he could not accept that there had been no compliance with that requirement. Appeal to the Supreme Court was allowed on a different issue. So the question is still open for this Court to decide.

The application is dismissed.

Also found at [1990] 2 CLJ 460